THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.24619 of 2006

Date: 29.12.2006

Between:
Potu Nageswara Rao, s/o Krishnaiah,
Aged 35 years, r/o Lenin Nagar,
Khammam, Khammam District.

… Petitioner.

And

The Commissioner,
Khammam Municipality,
Khammam.

… Respondent.

* * *

ORDER:

This court ordered notice before admission on 24.11.2006 and inasmuch as it was represented by the learned counsel by the petitioner that in pursuance of the notice issued there is a threat of demolition of the premises in question which is a house, interim stay was granted for a limited period and subsequent thereto the same was extended for a further limited period. The respondent in the writ petition filed W.V.M.P.No.2590 of 2006 to vacate the interim order.

2. The writ petition is filed for a writ of Mandamus declaring action of the respondent in not issuing licence to the petitioner to run bakery,

as illegal, arbitrary and unconstitutional and consequently direct the respondent to issue licence to the petitioner to run bakery and pass such other suitable orders.

3. It is stated that the petitioner is a physically handicapped (dumb and deaf) person and he is an unemployee and the petitioner had taken training in preparation of bakery items like bread, puffs, cakes, dilpasand etc., It is stated that the petitioner submitted an application to the respondent on 19.10.2006 requesting him to grant licence for establishment of a bakery and the respondent had received the same and processed for issuance of licence for bakery. It is also stated that the staff of the respondent municipality had informed the petitioner that his application had been processed and licence will be issued soon. It is also further stated that the petitioner made preparations to establish manufacturing unit of bakery items by taking advance loans and made trials of manufacturing bakery items. While so, to his utter surprise, the respondent issued notice dated 03.11.2006 under Section 366 of the A.P. Municipalities Act, 1965 to discontinue the trade within three days from the date of receipt of the notice. On receipt of the same, the petitioner got issued a reply notice through an advocate on 06.11.2006. Specific stand is taken that the petitioner had not established any bakery shop nor the petitioner is doing any trade in his house. But in spite of the same, the staff of the respondent has been regularly visiting his house and threatening the petitioner with demolition of his house for no fault. It is also stated that the action of the respondent in not issuing licence for running bakery is contrary to Article 19(1)(g) of the Constitution of India. The petitioner and his family members are not having any other source of income for their livelihood, and hence, the petitioner is badly in need of establishing such bakery. In such circumstances the writ petition is filed praying for

appropriate relief already referred to supra.

4. The impugned notice dated 03.11.2006 reads as hereunder.

NOTICE

Sub:- Unlicensed Trades- Discontinuance of the use of the premises for unlicensed trade of at Bakery.

* * *

Take notice that you are running trade bakery at premises No.11-8-136/A without obtaining license from the Khammam Municipality under Section 263 of Andhra Pradesh Municipalities Act, 1965.

Hence, you are served with a notice under Section 366 to discontinue the trade within (3) days from the date of receipt of this notice, failing which statutory action will be taken against you as per rules."

5. Section 263 of the Andhra Pradesh Municipalities Act, 1965 reads as hereunder:

" **263. Purposes for which places may not be used without licences:-** (1) The council may publish a notification in the prescribed manner that no place within municipal limits or at a distance within three kilometers of such limits shall be used for any one or more of the purposes specified in Schedule IV without the license of the Commissioner and except in accordance with the conditions specified therein:

Provided that no notification shall take effect—

(a) until sixty days from the date of publication, and

(b) except with the previous sanction of the Government in any area outside the municipal limits.

(2) The owner or occupier of every such place shall, within

thirty days of the publication of such notification, apply to the Commissioner for a licence for the use of such place for such purpose.

(3) Applications for renewal of such licences shall be made not less than thirty days and not more than ninety days before the end of every year and applications for licences for places to be newly opened shall be made not less than thirty days and not more than ninety days before they are opened.

(4) The Commissioner may, by an order and under such restrictions and regulations as to supervision and inspection as he thinks fit, grant or refuse to grant or renew such licence.

(5) In case the Commissioner refuses to grant or renew any such

licence, he shall record the reasons therefor.

(6) Every such licence shall expire at the end of the year, unless for special reasons the Commissioner considers it should expire at an earlier date when it shall expire at such earlier date as may be specified therein.

(7) Where a licence is granted or renewed under this section for the use of any place outside the municipal limits the council shall pay to the Gram Panchayat; if any, having jurisdiction over such place, or if there is no such Gram Panchayat, to such other authority as the Government may specify such portion of the fee received for the grant or renewal of the licence as the Government may by general or special order, direct."

6. Section 366 of the Andhra Pradesh Municipalities Act, 1965 reads as hereunder:

" 366. **Persons empowered to prosecute:-** Subject to the provisions of Section 365, no person shall be tried for any offence against the provisions of this Act, or of any rule or bye-law made under it, unless complaint is made by the Commissioner or by a person expressly authorized in this behalf by the Council within three months of the commission of the offence. But nothing therein shall affect the provisions of the [Code of Criminal Procedure, 1973 (Central Act 2 of 1974],

in regard to the powers of certain magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion;

Provided that failure to take out a licence, obtain permission or secure registration under this Act shall, for the purposes of this section, be deemed a continuing offence until the expiration of the period, if any, for which the licence permission or registration is required and if no period is specified, complaint may be made at any time within twelve months from the commencement of the offence."

7. In W.V.M.P.No.2590 of 2006 the in-charge commissioner of the respondent municipality filed counter-affidavit taking specific stand that the petitioner started bakery in the month of February 2006 without applying for licence. It is also stated that one S.Venkateswara Rao, resident of H.No.11-8/135/A who is neighbour of the petitioner filed complaints to the respondent on 16.7.2006, 4.9.2006, 13.11.2006 and 24.11.2006 continuously that one Potu Chittibabu had erected two chimneys using firewood, making bakery food products delivering thick black smoke causing air and environmental pollution to the neighbouring houses of the locality. Due to continuous smoke, edible oils smell, green chillies fry and noise smell coming from the unit thereby the neighbouring people are suffering with respiratory problems resulting in sleepless nights and these acts are creating health hazard to them. It is also stated that he had submitted relevant photos of the spot situation for perusal of the respondent also. Further, the neighbouring area people adversely effected with the bakery also requested to remove the same from the residential area and the following petitions had been referred to in paragraph 4 of the counter-affidavit.

a) Petition dt.4.9.2006 from J.Neerajakshi, r/o H.No.11-8/15, 8th ward Lenin Nagar, Khammam.

b) Petition dt.20.9.2006 from Basheer Khan, r/o No.11-

8/114, 8th ward Lenin Nagar, Khammam.

c) Petition dt.20.9.2006 from Shaik Hussain, r/o H.No.11-8/129, 8th ward Lenin Nagar, Khammam.

d) Petition dt.18.10.2006 from P.Parthasarathy, r/o H.No.11-8/45, 8th ward Lenin Nagar, Khammam.

e) Petition dt.10.11.2006 from 16 residents of 8th ward, Lenin Nagar, Khammam.

f) Legal Notice from the advocate, dt.13.11.2006.

Further specific stand is taken that one Potu Chittibabu had applied for issuance of licence for manufacturing bakery unit in the name of his so called brother Potu Nageswara Rao on 19.10.2006. Further specific stand is taken that since there are objections from the neighbours, the licence was not granted. Further specific stand is taken that inasmuch as it is being continued without valid licence, the respondent issued the impugned notice. Further specific stand is taken that the appellate authority is council and hence in this view of the matter also, the writ petition is liable to be dismissed.

8. The application said to have been submitted by the writ petitioner to the respondent is produced before this court. However, the denial in paragraph 5 of the counter-affidavit is a vague denial. Whatever the reason may be, inasmuch as the said stand had been taken by the respondent, the writ petitioner is given liberty to submit appropriate application for grant of licence in this regard within a period of one week from the date of receipt of a copy of this order and the respondent to consider the said application in accordance with law, if necessary, after putting on notice the objectors and pass appropriate orders within a period of two weeks thereafter, till then *status quo* obtaining as on today to be maintained.

9. The writ petition is disposed of accordingly. No order as to costs.

_____

(P.S.NARAYANA, J.)

Date: December 29, 2006.

Note:

Issue CC by tomorrow.

//B.O.//

BSB